

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>THOMAS L. REMMENG</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 220,853 & 237,147
<b>TECHNICAL IRRIGATION SERVICE</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY</b>	)	
<b>UNION INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and one of its insurance carriers, Hartford Accident & Indemnity (Hartford), appealed from the May 24, 1999, Order entered by Administrative Law Judge Pamela J. Fuller.

**ISSUES**

There are two separate docketed claims involved in this case. Docket No. 220,853 involves a July 5, 1996, accident, and Docket No. 237,147 involves an alleged June 2, 1998, accident.

The May 20, 1999, hearing and the resulting May 24, 1999, Order is the second hearing and order issued involving the issue of whether claimant's current need for medical treatment and temporary total disability benefits is the result of the July 5, 1996, accident or the alleged June 2, 1998, accident. For the July 5, 1996, accident, the respondent and its insurance carrier, Hartford, and claimant entered into an Agreed Award filed December 17, 1997, that awarded claimant, among other benefits, future medical treatment upon proper application to the Director.

On December 17, 1998, at the claimant's request, the first preliminary hearing was held. After claimant and a representative of the respondent testified and exhibits were admitted, the Administrative Law Judge decided an independent medical examination of the claimant would be useful in deciding the case. With the agreement of the parties, Philip R. Mills, M.D., of Wichita, Kansas, was appointed by the Administrative Law Judge to perform the independent medical examination of claimant. Dr. Mills examined the claimant on

January 18, 1999, and submitted the results of the examination in a report to the Administrative Law Judge on that same date.

Thereafter, in an Order dated February 10, 1999, based on testimony and exhibits contained in the preliminary hearing and Dr. Mills' independent medical examination report, the Administrative Law Judge ordered Hartford, the insurance carrier responsible for the original July 5, 1996, accident, to provide claimant with medical treatment and temporary total disability benefits in Docket No. 220,853.

Respondent and Hartford timely appealed the February 10, 1999, Order to the Appeals Board. The Appeals Board in an Order dated March 30, 1999, found it did not have jurisdiction to review the issue raised by respondent and Hartford because the issue concerned which of two insurance companies was responsible for payment of the benefits ordered. And that issue was not a jurisdictional issue listed in K.S.A. 1998 Supp. 44-534a that subjects a preliminary hearing order to Appeals Board review.

Without an order from the Administrative Law Judge or the consent of the other parties, Hartford made an ex parte request by letter to Dr. Mills. In a note dated March 5, 1999, Dr. Mills clarified his January 18, 1999, independent medical report by stating "It was my view that he would not have sustained this fracture had he not been shoveling." Hartford then filed, on April 5, 1999, an Application for a Preliminary Hearing and on April 6, 1999, a Motion to Terminate Post-Award Medical Benefits.

In the hearing held on May 20, 1999, Dr. Mills' March 5, 1999, note was admitted into evidence over the objection of Union Insurance Company (Union). Union argued that Dr. Mills' March 5, 1999, note was not admissible because it was made as the result of an ex parte contact from Hartford. Because Dr. Mills was appointed by the Administrative Law Judge to perform an independent examination, Union contends that Hartford was prohibited from making an ex parte request to Dr. Mills. Union argued that Hartford is required to take Dr. Mills' deposition testimony before Dr. Mills can change or otherwise express an opinion different than contained in his original report. Accordingly, Union contends Dr. Mills' March 5, 1999, note was inadmissible because Hartford made an ex parte request instead of taking Dr. Mills' deposition.

Although the Administrative Law Judge admitted Dr. Mill's March 5, 1999, note into evidence, she denied Hartford's request to terminate the benefits ordered. Respondent and Hartford appeal and contend that the reason claimant currently is in need of medical treatment and is unable to work is not the result of the July 5, 1996, accident but is the result of a separate accident that occurred while he was working for the respondent on June 2, 1998.

Hartford asserts that its workers compensation coverage for respondent ended October 23, 1997, and Union's coverage began after that date. Therefore, for a June 2, 1998, accident, Union is liable for payment of the workers compensation benefits owed and not Hartford.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs of the parties the Appeals Board concludes as follows:

The Appeals Board will first address whether it has jurisdiction to review the issues raised in this appeal. By filing a Motion to Terminate Post-Award Medical Benefits along with a request for a preliminary hearing, Hartford attempts to change the May 24, 1999, Order, from a preliminary hearing Order to a final Order. But the Appeals Board finds the specific benefits Hartford is attempting to terminate were benefits ordered as a result of an Order issued pursuant to the provisions of the preliminary hearing statute found K.S.A. 1998 Supp. 44-534a. The Appeals Board concludes that the May 20, 1999, hearing was a preliminary hearing and the May 24, 1999, Order was a preliminary hearing order made pursuant to that statute. Accordingly, as previously found, in its March 30, 1999, Order, the Appeals Board concludes the issues raised in this appeal are not jurisdictional issues and the appeal should, therefore, be dismissed. See K.S.A. 1998 Supp. 44-534a.

The Administrative Law Judge in ordering the respondent to provide claimant with medical treatment and temporary total disability benefits did not exceed her jurisdiction. The dispute is not, in our view, whether the injury arose out of or in the course the employment. The dispute here concerns, instead, which of two insurance companies is responsible for benefits ordered. This is not a jurisdictional issue and the Administrative Law Judge has not exceeded her jurisdiction.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal filed in this case should be dismissed and the May 24, 1999, Order entered by Administrative Law Judge Pamela J. Fuller, remands in full force and effect as originally entered.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1999.

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BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS  
Richard J. Liby, Wichita, KS  
Mark A. Buck, Topeka, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director